

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

FOX ROTHSCHILD LLP

49 Market St.

Morristown, NJ 07960

Joseph J. DiPasquale, Esq.

Michael R. Herz, Esq.

Joseph A. Caneco, Esq.

jdipasquale@foxrothschild.com

mherz@foxrothschild.com

jcaneco@foxrothschild.com

Telephone: (973) 992-4800

Facsimile: (973) 992-9125

Counsel to the Debtor and Debtor in Possession

In re:

ASSUNCAO BROS., INC.,

Debtor.

Chapter 11 (Subchapter V)

Case No. 22-16159

Judge: Hon. Christine M. Gravelle

Hearing Date: January 3, 2023 at 2:00 p.m.
(Prevailing Eastern Time)

**FIRST INTERIM APPLICATION OF FOX ROTHSCHILD LLP AS COUNSEL TO
THE DEBTOR FOR ALLOWANCE OF COMPENSATION FOR PROFESSIONAL
SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED
FOR THE PERIOD FROM AUGUST 3, 2022 THROUGH OCTOBER 31, 2022**

Fox Rothschild LLP ("Fox Rothschild"), as counsel to Assuncao Bros., Inc., the above-captioned debtor and debtor-in-possession (the "Debtor"), submits this application (the "Application") pursuant to 11 U.S.C. § 330, Fed R. Bankr. P. 2016, and D.N.J. LBR 2016-1, as its first interim fee application for compensation for services rendered and reimbursement of expenses for the period of August 3, 2022, through October 31, 2022 (the "Fee Period"). By this Application, Fox Rothschild seeks allowance and payment of compensation in the amount of \$214,957.50 for services rendered by Fox Rothschild during the Fee Period and allowance and reimbursement of its actual and necessary expenses in the amount of \$7,475.93 for the Fee Period.

In support of the Application, Fox Rothschild submits a Certification of Counsel attached hereto as **Exhibit A**, and respectfully represents as follows:

BACKGROUND

1. On August 3, 2022 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Subchapter V of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), commencing the above-captioned chapter 11 case in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

2. On August 26, 2022, Fox Rothschild filed *Debtor’s Application for Entry of an Order Authorizing the Employment and Retention of Fox Rothschild LLP as Counsel to the Debtor Nunc Pro Tunc to the Petition Date* (the “Retention Application”) [Doc. No. 90]. Also on that date, Fox Rothschild filed a Revised Disclosure of Compensation of Attorney for Debtor in which Fox Rothschild disclosed, that it had received a retainer in the amount of \$67,690.00 (the “Retainer”) from the Debtor prior to the Petition Date.

3. The Retention Application sets forth the compensation arrangement between Fox Rothschild and the Debtor, whereby Fox Rothschild would charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date such services are rendered and for out-of-pocket expenses. Fox Rothschild would then apply to the Court for allowance of compensation and reimbursement of out-of-pocket expenses incurred after the Petition Date, subject to Court approval and in accordance with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of the United States Bankruptcy Court for the District of New Jersey, the applicable Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 (the

“U.S. Trustee Guidelines”), and any orders entered in this case governing the compensation and reimbursement of professionals for services.

4. On October 12, 2022, the Court entered an *Order Approving Retention of Fox Rothschild LLP as Counsel to the Debtor Effective August 3, 2022* (the “Retention Order”) [Doc. No. 137].

5. Fox Rothschild has worked diligently through this case as the Debtor’s bankruptcy counsel. Fox Rothschild worked hand-in-hand with the Debtor’s financial advisor KCP Advisory Group, LLC (“KCP”) through the case. Among other things, Fox Rothschild prepared several first day motions and follow-up motions that would allow the Debtor to ensure its most vital pre-petition obligations could be met and ensure that the Debtor had a chance to continue to operate following its bankruptcy filing and reorganize, such as for payment of employees and maintenance of cash management systems, post-petition financing and use of cash collateral, as well as motion to sell certain of the Debtor’s assets. During the Fee Period, Fox Rothschild provided legal guidance to the Debtor as it continued its business operations.

6. In addition to assisting the Debtor with its transition into bankruptcy and continuing operations, during the first several weeks of the case Fox Rothschild addressed, among other items, (i) issues pertaining to the Debtor’s financing and sale motions, including negotiating with several parties regarding the terms of financing and sale,¹ (ii) responding to discovery requests from various parties, and (iii) negotiating a consent order with NGM Insurance Company regarding the disposition of the Debtor’s bonded projects. The discovery efforts included producing voluminous documentation and producing the Debtor’s financial advisor for deposition on August 20, 2022.

¹ The parties that Fox was engaged with on financing and sale issues early in the case included the United States Trustee, the Subchapter V Trustee, secured creditor Manasquan Bank, secured creditor the Small Business Administration, the Debtor’s surety, NGM Insurance Company, the buyer, Vollers Excavating and Contractors, Inc., and several other third parties.

Fox Rothschild also prepared and filed a motion to reject leases, and negotiated consent orders with parties providing various relief. Most recently, Fox Rothschild has focused preparing the Debtor's plan of reorganization.

**FOX ROTHSCHILD'S APPLICATION FOR COMPENSATION
AND REIMBURSEMENT OF EXPENSES**

7. This is Fox Rothschild's first interim application for compensation filed in this Case. To date, there have been no orders entered approving interim fee applications for Fox Rothschild.

JURISDICTION, VENUE, AND STATUTORY BASIS

8. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Application is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 328 and 330 of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules 2016-1 and 2016-3.

**SUMMARY OF SERVICES RENDERED AND EXPENSES
INCURRED DURING THE FEE PERIOD**

9. The compensation requested in this Application is reasonable based on the nature and extent of the services rendered, the size and complexity of this Case, the time, labor required and other related factors.

10. As described in further detail below, during the Fee Period, the professional services performed by Fox Rothschild were necessary and appropriate to assist the Debtor in this case and were performed in an expeditious and efficient manner. As such, Fox Rothschild submits that the compensation sought herein is reasonable within the meaning of section 330 of the Bankruptcy Code.

11. As set forth in the Application cover sheet submitted herewith, Fox Rothschild rendered a total of 360.40 hours of professional services during the Fee Period, for which it seeks compensation of \$214,957.50 and \$7,475.93 incurred in out-of-pocket expenses which were “actual, necessary expenses” in connection with rendering the professional services described herein. The blended hourly rate of for professional services during the Fee Period is \$596.44.

12. To apprise the Court of the legal services rendered during the Fee Period, Fox Rothschild sets forth the following summary. This summary is intended only to highlight the categories of services to which Fox Rothschild devoted substantial time and attention on behalf of the Debtor.

A. Asset Analysis and Recovery (A)

Fox Rothschild analyzed where the Debtor could find or recover assets for the benefit of the estate other than those assets that were clearly in the Debtor’s control, as well as communicating such analysis internally and with Debtor management. This also included negotiating and preparing a motion to sell certain of the Debtor’s assets and preparation of an asset purchase agreement. Time spent in connection with the sale of the Debtor’s assets in also included in category B below “Asset Disposition”).

Fees: \$2,073.00; Hours: 4.3

B. Assumption/Rejection of Leases and Contracts (AA)

Fox Rothschild communicated internally and with the Debtor regarding the various contracts for the Debtor’s bonded and non-bonded projects. Additionally, Fox Rothschild analyzed the executory contracts of the Debtor and counseled the Debtor regarding assumption and rejection options.

Fees: \$18,472.00; Hours: 30.8

C. Asset Disposition (B)

Fox Rothschild reviewed and analyzed the sale of certain of the Debtor’s assets and the costs and benefits associated therewith. Fox Rothschild communicated with potential buyers on behalf of the Debtor and provided updates and counsel about asset sales to Debtor’s management. Fox Rothschild prepared the motion to sell certain of the Debtor’s assets and all pleadings related thereto. Fox also negotiated

with various parties in interest including secured creditors, the subchapter V trustee, and others regarding the sale of the assets and the terms and provisions of the Asset Purchase Agreement.

Fees: \$43,062.00; Hours 71.7

D. Business Operations (C)

This category encompasses a wide variety of activities and includes, but is not limited to the following: communicating with various counsel regarding the Debtor's pre-petition obligations; communications with the United States Trustee and the Court regarding hearings; preparation of the Debtor's Schedules of Assets and Liabilities and Statement of Financial Affairs and amendments to same; communications with the Debtor, KCP and others regarding the IDI information to be provided to the United States Trustee; review of Monthly Operating Reports and communications regarding NJ Department of Transportation issues and issues with regard to the unions; and issues related to the Debtor's ongoing projects.

Fees: \$14,949.00; Hours: 25.8

E. Court Appearance (CA)

Fox Rothschild attended all hearings scheduled by the Court including hearings regard to DIP financing and sale of the Debtor's assets, as well as a Status Conference scheduled by the Court. Fox Rothschild prepared for the hearings and after the hearings concluded, Fox Rothschild revised and submitted all orders to Chambers.

Fees: \$5,153.00; Hours: 6.7

F. Case Administration (D)

Fox Rothschild engaged in a variety of necessary administrative tasks. These tasks included, but were not limited to, preparation of various first date motions and communications internally and with interested parties regarding same; filing of the first day motions and applications with the Court; reviewing notices from the Court regarding service and changes of address; communicating with Chambers regarding hearing dates and times; filing or revising multiple motions and pleadings; reviewing orders entered by the Court and sharing with necessary parties; reviewing the list of the Debtor's top 20 vendors; preparing for hearings; preparing or finalizing certificates of service and service of papers; and sharing drafts of pleadings with the UST; calendaring relevant dates and deadlines in connection with the Debtor's bankruptcy case; and other tasks and services not generally related to another category.

Fees: \$42,878.50; Hours: 83.5

G. Claims Administration and Objections (E)

Fox Rothschild engaged in a review of the Debtor's contracts and communications with interested parties regarding same. In addition, Fox Rothschild reviewed and analyzed claims filed against the Debtor and communications with the Debtor and KCP regarding same.

Fees: \$6,273.00; Hours: 8.5

H. Fee/Employment Applications (G)

During the Fee Period, Fox Rothschild prepared Fox Rothschild's employment application, as well as the employment application of KCP Advisory Group, LLC as the Debtor's financial advisor and certain related documents. Also included in this category is communications with the Office of the United States Trustee regarding its objections to the retention of Fox Rothschild and KCP Advisory Group, LLC.

Fees: \$24,729.50; Hours: 44.3

I. Reporting (GG)

Fox Rothschild assisted the Debtor and its financial advisor KCP with all reporting requirements throughout the Fee Period. Fox Rothschild also prepared for the Initial Debtor Interview and 341 Meeting of Creditors by sharing documentation with the United States Trustee, and also provided requested documentation to the subchapter V trustee. This also included review and filing of Monthly Operating Reports and preparation and filing of Amended Statement of Financial Affairs.

Fees: \$6,935.00; Hours: 9.9

J. Fee/Employment Objections (H)

This category includes time related to the United States Trustee's objections to the retention of Fox Rothschild and KCP and resolutions of said objections.

Fees: \$1,304.50; Hours: 1.6

K. Financing/Cash Collateral (I)

This category includes time related to the preparation of the cash collateral and DIP motion, budget and credit agreement and related documents, and includes negotiations with various parties in interest regarding same. It also includes the review and analysis of UCC-1 filings and post-closing issues.

Fees: \$8,350.00; Hours: 14.4

L. Litigation (Other than Avoidance Litigation) (J)

During the Fee Period, Fox Rothschild prepared a summary of all prepetition litigation pending against the Debtor and revised this summary with new information as the case progressed. Fox Rothschild drafted and filed various Suggestions of Bankruptcy in pending litigation. Fox Rothschild reviewed the dockets of the prepetition litigation to determine their status, and communicated with counsel for pre-petition litigants regarding cases and stay issues. This category also includes time spend with regard to deposition notice and 2004 subpoena by NGM Insurance Company (“NGM”) and responses to same, as well as production of documents to NGM and preparation for and attendance at the deposition of Jacen Dinoff (KCP). In addition, Fox Rothschild prepared an Application and Consent Order with NGM. This category also includes time spent in connection with an Application and Consent for stay relief with Acrow Corporation of America (“Acrow”).

Fees: \$18,269.00; Hours: 25.4

M. Meetings and Communications with Creditors (L)

Fox Rothschild drafted and reviewed email correspondence regarding the 341 and Meeting of Creditors and the IDI, fielded questions from creditors and responded accordingly.

Fees: \$639.00; Hours: 1.2

N. Plan and Disclosure Statement (M)

This category includes time spent in connection with a formulation of Plan, including communications and meetings with the Debtor, KCP and other interested parties regarding plan options and strategy. Fox Rothschild analyzed claims filed against the Debtor for treatment under the plan and drafted a detailed Plan. It worked with the Debtor’s professionals to ensure accurate information and feasibility. Fox Rothschild also prepared a motion to extend time to file the plan.

Fees: \$18,443.00; Hours: 27.9

O. Relief from Stay Proceedings (N)

Fox Rothschild negotiated with counsel for Acrow and NGM regarding relief from the automatic stay. Fox Rothschild prepared and filed Applications, Stipulations and Consent Orders with Acrow and NGM regarding relief from stay.

Fees: \$1,072.00; Hours: 1.7

P. Travel (P):

Fox Rothschild attorneys attended a hearing at the bankruptcy court in connection with the sale of certain of the Debtor's assets and approval of a final DIP Order.

Fees: \$1,820.00; Hours: 2.0

Q. Tax Issues (W):

Fox Rothschild communicated internally about, and analyzed, the Debtor's tax situation, including its liability for certain post-petition taxes. Fox Rothschild communicated with the subchapter V trustee and KCP regarding tax returns and post-petition tax payments due.

Fees: \$535.00; Hours: .7

13. In addition to the foregoing, Fox Rothschild incurred out-of-pocket expenses during the Fee Period in the amount of \$7,475.93 which were "actual, necessary expenses" in connection with rendering the professional services described above pursuant to section 330(a)(1)(B) of the Bankruptcy Code. Such expenses include, but are not limited to deposition/transcript fees, court hearings and court solutions appearances, parking, photocopying, postage, legal research, and secretarial charges. Fox Rothschild has made every effort to minimize the expenses in this matter by utilizing the most cost-efficient methods of communication consistent with the necessary time restraints.

COMPLIANCE WITH GUIDELINES

14. Fox Rothschild believes that this Application substantially complies with the local rules of this Court and the U.S. Trustee Guidelines. To the extent there has not been material compliance with any particular rule or guideline, Fox Rothschild respectfully requests a waiver or an opportunity to cure.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, pursuant to sections 328 and 330 of the Bankruptcy Code, Fox Rothschild respectfully requests (i) allowance of compensation for professional services rendered as counsel to the Debtor during the Fee Period in the amount of \$214,957.50; (ii) reimbursement of actual and necessary expenses incurred by Fox Rothschild during the Fee Period in the amount of \$7,475.93; (iii) payment of the outstanding fees and expenses due to Fox Rothschild; (iv) authority to apply the Retainer to reduce the awarded fees and expenses; and (v) such other and further relief as this Court deems just and proper.

DATED: December 2, 2022

FOX ROTHSCHILD LLPs
Counsel for the Debtor and Debtor-in-Possession

By: /s/ Joseph J. DiPasquale
JOSEPH J. DIPASQUALE